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DECISION THE COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-218542 **DATE:** August 8, 1985

MATTER OF: ManTech Field Engineering Corporation

DIGEST:

1. When procuring agency, using proposed costs to evaluate offerors' understanding of work to be performed, determines that incumbent's proposed costs are reasonable when compared with government estimate, purpose of cost realism analysis contemplated by solicitation has been achieved.

2. An offer is not materially unbalanced merely because some labor category rates do not carry their share of the cost of work and profit. To be materially unbalanced, the estimates of labor category usage used to calculate the estimated contract price must be so unreliable that it is doubtful that the evaluated price is a reasonable estimate of the price of performance.

3. The decision to modify a contract to increase the necessary work is improper where the contracting officer could have amended the solicitation before award so as to allow all offerors to compete on an equal basis for the agency's changed requirements. Nevertheless, if a protester could not reasonably have offered to supply the additional services at a price low enough to have received the award, the action does not warrant sustaining the protest.

4. Whether procuring agency should have requested certified cost or pricing data in negotiating a contract modification is a matter of contract administration.

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ManTech Field Engineering Corporation protests the award of a contract to Bell Technical Operations Corporation, the incumbent contractor, under request for proposals (RFP) No. DAEA18-85-R-0005, issued by the U.S. Army Procurement Office, Fort Huachuca, Arizona. The protester alleges that Bell's prices are unrealistically low; that in finding Bell's proposal acceptable, the Army acted contrary to the RFP's evaluation criteria; and that the Army improperly modified Bell's contract shortly after award.

We deny the protest.

BACKGROUND

The RFP sought offers to provide engineering, test and evaluation, and related services for the U.S. Army Electronic Proving Ground. The solicitation provided for a requirements-type contract with a 6-month base period and two 1-year options. Fixed-price delivery orders will be issued under the contract, based upon the successful offeror's hourly labor rates and the cost of necessary materials, travel, and office supplies. Offerors were required to propose "fully loaded" hourly rates for specific labor categories, including wages, overhead, applicable general and administrative costs, and profit. Each offeror determined its total estimated price by multiplying its hourly rate for each category by the estimated number of hours for that category set forth in the RFP and then adding the cost of materials, travel and office supplies. Since these last three items will be reimbursable under the contract, the RFP provided a cost estimate for each of them to be used for evaluation purposes.

The RFP stated that award would be made to the technically acceptable offeror submitting the lowest overall evaluated price. The solicitation listed three technical evaluation factors: technical, management, and cost. The evaluation scheme provided for the agency to establish a rating (Superior, Very Good, Acceptable, Marginal, or Unacceptable) for each factor based upon ratings given to each of several subfactors. The RFP stated that an unacceptable rating for any management or cost subfactor would render the entire proposal unacceptable. An unacceptable rating for any technical subfactor could, but would not necessarily, make the proposal unacceptable. Subfactors to be considered under the cost factor were 1) Cost Proposal Tracking to Technical and Management Proposals, 2) Personnel Cost (Professional Compensation), 3) Task

Execution Plans, 4) Other Costs, and 5) Detailed Cost Backup. Basically, these subfactors represented various ways of assessing the cost realism of proposals.

The Army received offers from Bell ($4,355,720), ManTech ($4,697,827), and ERI Corporation ($4,994,760). An evaluation board found all three proposals acceptable, both technically and from the standpoint of cost. The evaluation board scored each technical and management subfactor, but it did not rate the cost factor and subfactors as provided in the RFP. Instead, each offeror's total estimated price was compared with the Army's independent estimate, and all were considered to be reasonable. Since the evaluation board had discovered no major deficiencies in any of the proposals, the contracting officer decided to proceed without discussions and, on March 22, 1985, awarded a contract to Bell.

Shortly after making the award, the contracting officer contacted Bell to negotiate a modification to the contract in order to add two additional labor categories--that of computer scientist and technical writer. Negotiations between Bell and the agency took place on March 27 and 28. On April 1, the parties executed a modification adding the two labor categories for an estimated 15,000 more hours of work at an estimated increase in price of $447,350.

MANTECH'S PROTEST

Upon learning of the award to Bell, ManTech filed a protest with our Office, arguing that the Army failed to evaluate the realism of Bell's cost proposal in accordance with the RFP evaluation scheme. Had the agency done so, ManTech contends, it would have rejected the proposal as unacceptable because the proposed costs were unreasonably low. ManTech believes that Bell omitted costs of facilities, fringe benefits and other necessary expenses and included compensation rates that are below those paid under the predecessor contract and are too low to recruit and retain competent employees. The protester believes that Bell's proposed wages are below the minimums required by the Service Contract Act. ManTech also claims that Bell materially unbalanced its prices for various labor categories.

After ManTech learned of the contract modification, it filed a supplemental protest, arguing that the purpose of the modification was to allow Bell the opportunity to recover costs omitted from its original proposal. ManTech further argues that the fact that the Army agreed to modify

the contract only days after the award establishes that the RFP did not reflect the actual needs of the government. ManTech therefore believes that it was never afforded an opportunity to compete for the contract as awarded. The firm also asserts that the Army's failure to require Bell to submit cost or pricing data in connection with negotiation of the contract modification violated the Truth in Negotiations Act and applicable regulations and facilitated Bell's overcharging for the additional services.

THE ARMY RESPONSE

According to the Army, Bell's hourly rates are fully loaded and its overall price is reasonable. The agency points out that the prior contract with Bell was a cost-plus-fixed-fee contract while the protested solicitation was for a fixed-price-type contract. In its opinion, the lower cost of performance for the new contract period is not unusual in view of the change in the type of contract being used. In fact, according to the contracting officer, the competition was conducted in order to significantly reduce the price paid for the services under Bell's previous cost-based contract. The Army also points out that all three proposals were within approximately 10 percent of the independent government estimate.

The Army states that Bell's proposal was evaluated for cost realism by comparing Bell's estimated cost with the government estimate and that, based on this analysis, it found the proposal acceptable. In addition, the Army states that, contrary to ManTech's belief, the Bell proposal does provide for costs of facilities and proper fringe benefits, and it complies with the Service Contract Act. The Army contends that ManTech has failed to prove that the Bell proposal has omitted any costs or that it is materially unbalanced.

Regarding the decision to modify the contract shortly after award, the Army points out that section C.3.8 of the RFP, as modified by amendment No. 0002, put all offerors on notice that:

> "[Q]ualifications are provided for labor categories that do not appear in Section B.1. There is no immediate requirement for hours in these labor categories; however, such requirements may evolve in the course of performance. Estimated hours and loaded hourly rates may be added to the contract by a negotiated modification should a firm requirement arise."

In the Army's opinion, this provision provided the authority for its action and notified ManTech that, regardless of what company received the award, future modification of the contract was a distinct possibility.

As to its decision to execute the modification, the agency states that on February 27 and March 13, i.e., well after the completion of proposal evaluation and, in the first case, virtually concurrent with the decision not to conduct negotiations, the Electronic Proving Ground notified the contracting office that a requirement might "evolve" for a computer scientist and a technical writer, but it did not furnish any estimated hours for those two labor categories. According to the Army, the Electronic Proving Ground did not provide the contracting officer with an estimate of the total hours that these two additional labor categories might require until after award.

Before the award, the contracting officer received "requirements packages" from the activity that were intended to be issued as delivery orders against the proposed contract. Three of the requirements packages contained estimated hours for the two unpriced labor categories but, because of time constraints, the contracting officer did not examine them immediately, but rather put them aside for attention after award. The agency argues that this information was inadequate and, therefore, the contracting officer never had "quantifiable requirements" for the two labor categories that "could be definitely stated as contract line items." It was only after the March 22 award, according to the Army, that the Electronic Proving Ground furnished the contracting officer with an estimate of the total hours needed, so that the two new labor categories could be added to the contract.

The Army further states that it never discussed the possibility of a modification with Bell before the award; all discussions occurred after execution of the contract. The agency points out that the contracting officer was under severe time pressures at the end of March because the interim contract with Bell was due to expire on March 31 and the Electronic Proving Ground desired to issue delivery orders on April 1. According to the Army, these deadlines explain why the modification was rushed through during the last days of March.

As to the impact of the modification on the contract price, the Army concedes that the hourly rates agreed to are somewhat higher than the rates Bell offered for similar labor categories under the competitive procurement. The agency argues, however, that they are comparable to those approved for an interim contract with Bell.

Finally, the Army argues that because of the $342,107 difference in the total estimated price between Bell's and ManTech's proposals, it would have been necessary for ManTech to offer to provide the estimated 15,000 additional hours of work for less than $105,253 in order to be below Bell's total estimated price. The agency believes that ManTech could not possibly have offered such a low price for the amount of work involved. Therefore, it concludes that ManTech was not prejudiced by lack of an opportunity to compete for the additional hours.

GAO ANALYSIS

A. Cost Realism Evaluation

ManTech complains that the Army failed to evaluate the cost realism of proposals as required by the RFP. If the Army had done so, according to ManTech, Bell's proposal would have been held to be unacceptable for including professional compensation levels too low to ensure adequate hiring and retention of competent staff. ManTech also contends that Bell's proposal was unacceptable because its loaded labor rates do not include other necessary costs such as those for facilities and fringe benefits. Bell allegedly will seek reimbursement for these omitted costs through the cost-reimbursement portion of the contract.

As noted above, the Army did not initially follow the precise RFP evaluation scheme for cost realism, which provided for five subfactors to be rated. The proposal evaluation board concluded that each offeror's total proposed cost was "commensurate" with an understanding of the required work, the risks involved, and an ability to organize and perform the work. This determination was reached by comparing the cost proposals with the government's cost estimate.

As a result of ManTech's protest, the board reexamined Bell's proposal and concluded that the firm had included in its proposed labor rates amounts for facilities costs and fringe benefits. The board also concluded that Bell's fringe benefits were essentially equivalent to those of ManTech. On the average, Bell contemplated salaries and fringe benefits around 8 percent less than it had paid during the previous year. The Army believes that the compensation differences between Bell and ManTech are reasonable and would not have justified a finding that Bell's proposal was unacceptable under the listed technical evaluation factors and subfactors. The overall reduction in proposed compensation was attributed to competition faced by an incumbent contractor.

We have examined each firm's cost proposal, and we agree. The difference in estimated prices between the two proposals resulted primarily from average lower professional employee salaries projected by Bell. Bell proposed paying 11 of 17 professional employees basic salaries that were less than ManTech proposed (4 were to be paid more and 2 about the same). We do not believe that Bell's intended compensation levels evidenced such a misunderstanding of the work or so risked interruption in the work and loss of personnel that its proposal was unacceptable under the terms of the RFP. In this regard, we note that Bell has been the incumbent for several years and has experienced an employee turnover rate considered by the Army to be relatively low.

The cost realism analysis was intended to establish the offerors' understanding of the work and management judgment, as well as their ability to recruit and retain a competent professional staff. The cost factor was not to be used to estimate how much the government might actually pay under the contract, since the resulting contract would contain fixed labor rates, and only a few clearly defined costs such as travel were reimbursable. We think the Army achieved the objective of the cost realism analysis. Moreover, the reimburseable categories of costs--travel, office supplies and materials--are minor and do not provide opportunity for Bell to recomp any losses from the fixed-price portion of the contract. Consequently, we deny ManTech's protest on this basis.

We also find no merit in ManTech's protest that Bell's prices for various labor categories were materially unbalanced. Offers are not materially unbalanced merely because each item (in this case, loaded labor rates) does not carry its share of the cost of work plus profit. TWI Inc., 61 Comp. Gen. 99 (1981), 81-2 CPD ¶ 424. Bell's loaded labor rates would be materially unbalanced if the Army's estimates about labor category usage were so unreliable that there is doubt that Bell's price is a reasonable estimate of the price of its performance. Since the protester does not allege that the labor estimates are inaccurate, we have no basis to conclude that Bell's offer was materially unbalanced. See Gyro Systems Co., B-216447, Sept. 27, 1984, 84-2 CPD ¶ 364.

The protest asserts that Bell's price reflects compensation below that required by the Service Contract Act, 41 U.S.C. § 351, et seq. (1982), but does not indicate specifically what labor categories are allegedly affected. Under these circumstances, we do not believe that Mantech has met its burden of affirmatively proving its case on this

issue. See Del Rio Flying Service, Inc, B-197448, Aug. 6, 1980, 80-2 CPD ¶ 92. Moreover, whether a contractor will comply with the Service Contract Act is a matter for the Department of Labor, not our Office, since the Department of Labor is responsible for the Act's administration and enforcement. Central Texas College, B-218279, et al., Mar. 13, 1985, 85-1 CPD ¶ 310.

B. Contract Modification

ManTech has questioned the agency's decision to modify the contract shortly after making the award. As a general rule, our Office will not consider a protest against a contract modification because, once a contract is awarded, questions concerning changes, amendments, or modifications are matters of contract administration and, as such, are beyond the scope of our bid protest function. E.J. Murray Co., Inc., B-212107.3, Dec. 18, 1984, 84-2 CPD ¶ 680. One exception to this rule is when the protester alleges that an agency awarded a contract with the intention of significantly modifying it after award. Moore Service, Inc., B-200718, Aug. 17, 1981, 81-2 CPD ¶ 145. In that case, our Office will examine the record to determine whether the modification altered the contract to such an extent that the competition for the contract as modified might be materially different from the competition originally obtained. American Air Filter Co.--DLA Request for Reconsideration, 57 Comp. Gen. 567 (1978), 78-1 CPD ¶ 443. If we ultimately find that the competition would be significantly different, then we generally conclude that the award was improper and recommend that the agency resolicit the requirement, incorporating the revised specifications into the new solicitation. Moore Service, Inc., B-200718, supra.

Here, ManTech has alleged that the Army awarded the contract to Bell with the intention of modifying it. The Army, however, maintains that it lacked sufficient data before award to amend the solicitation and allow all the offerors to compete on the changed requirements. We must decide, therefore, whether it was impossible for the Army to amend the solicitation before award, thus justifying its later contract modification.

We emphasize first that the Army was only required to estimate the hours needed in the two additional labor categories. Under a requirements-type contract, an agency is not bound by the numbers it proposes; rather, these are used by offerors to establish their prices and by the agency to evaluate them. Therefore, the agency should not have hesitated to amend the solicitation merely because it could not

estimate the additional hours as accurately as it might have wished. Some degree of risk is inherent in any contract, and offerors are expected to consider this in setting their prices. See, for example, Palmetto Enterprises, 57 Comp. Gen. 271 (1978), 78-1 CPD ¶ 116.

The record does not support the Army's statement that the Electronic Proving Ground did not furnish the contracting officer before award with an estimate of the total hours that these two additional labor categories, computer scientist and technical writer, might require. In two separate memoranda the activity informed the contracting officer that the two positions had been "inadvertently left off" of the solicitation, that they had been "utilized" during the prior contract, and that they were "still required for the pending contract." The Electronic Proving Ground therefore requested that the contracting officer "take the necessary action" to include these two job categories in the proposed contract.

In our opinion, these transmissions--dated February 27 and March 13--indicate that the requirement for a computer scientist and a technical writer had been clearly identified before the March 22 award. Moreover, since these labor categories had been "utilized" during the previous contract and since, as the Army admits, the Electronic Proving Ground--before award--prepared delivery order requests that included hours for a computer scientist and a technical writer, this information could have been used to develop estimates. Therefore, we find that it would have been possible for the Army to have amended the solicitation to include the two job categories and that, since a significant number of additional hours were involved, it should have done so.

Nevertheless, we find that ManTech was not prejudiced by the Army's failure to allow it to compete for the additional hours. As the agency points out, even if ManTech had been given an opportunity to amend its offer to cover the estimated 15,000 additional hours of work, it is not reasonable to assume that the protester would have offered a low enough price to overcome the $342,107 difference between its total price and Bell's total price. To have done so, it would have had to offer to supply 15,000 hours of work by computer scientists and technical writers for an average basic salary of almost one-half of the lowest basic compensation for the professional labor categories in ManTech's proposal. Therefore, we deny the protest on this ground.

Finally, ManTech argues that, in negotiating the modification, the Army should have requested certified cost

or pricing data from Bell. As we discussed above, Mantech was not prejudiced by the Army's failure to include the work added by the modification in the specification for the original contract. In view of this conclusion, we consider the question of whether the Army should have obtained certified cost on pricing data during negotiations of the modification price to be a matter of contract administration and not for our consideration. See 4 C.F.R. § 21.3(f)(1) (1985).

The protest is denied.

for Seymour Efros
Harry R. Van Cleve
General Counsel